URS

Memorandum

Date: November 2, 2005

To: ADOT Statewide Access Management Program Technical Advisory Committee

From: URS Project Team

Subject: Legal Issues Pertaining to the Implementation of Access Management Program and Project

Overview

The purpose of this paper is to briefly review the legal and administrative issues pertaining to the implementation of a new access management in Arizona. This paper is based on current regulatory and other legal authorities including the Arizona Revised Statutes (ARS), and the Arizona Administrative Code (AAC).

In summary, under existing legal authority, the Arizona Department of Transportation (DOT):

- May implement a comprehensive, regulatory access management program similar to the modern regulatory programs currently operating in several other states.
- There may be a few legal limitations, and there may be some management policy and engineering preferences that could further define or limit the extent of certain access program elements and procedures.
- Establishing a hierarchy of access classifications for the purpose of managing the level of access as a function of roadway importance may also be implemented under existing authority.

Definition of Access Management

For State purposes, access management is the control of the location and design of all vehicular approaches to the state highway system including driveways and public and private roads. This control includes the option to deny a direct highway connection when it is appropriate. This control is an exercise of the police powers of the state to protect the health, welfare and safety of the public, as well as managing the physical integrity and operation of a constructed public facility. **The challenge** of managing access is establishing a program of legal, administrative, and technical strategies implemented through planning practices, rules, engineering standards, and procedures, that result in access decisions by the agency that successfully, fairly and consistently, determine for each access situation the appropriate balance between private property access rights and public's need to control access.

Legal and Administrative Authority to Manage Access Along Arizona State Routes.

All private property rights, including access rights, may be managed to varying degrees by the Department's authority of condemnation through the State's power of eminent domain for transportation purposes (ARS 28-7093), and by the police powers - which is the right of a government (for the people) to regulate personal conduct and the use of land in order to protect the welfare, health and safety of the public.

Title 28 ARS, establishes ADOT and governs a broad range of transportation issues. Among other things, the statutes require the ADOT director to exercise complete and exclusive and operational control and jurisdiction over the use of state highways and routes; coordinate the design, right-of-way purchase and construction of controlled access highways, and exercise other duties or powers necessary to carry out efficient operation of the Department (ARS 28-332 and 28-363).

Access permitting is currently carried out pursuant to ARS 28-7053 which prohibits unauthorized encroachments in state highways. For an encroachment to be lawful, it must be authorized by the Director. The Director has adopted administrative rules (regulations) governing encroachments. These rules are published as Arizona Administrative Code, R17-3-501 et. seq., Highway Encroachments and Permits - which includes access connections to state highways among a number of other encroachment types (about ten). The rule states that each encroachment requires a permit. Permits for driveways (encroachments) onto a state highway may be granted by ADOT's Engineering Districts, a delegation from the Director, in accordance with this rule.

In addition to any police powers to control accesses by permit, the Director may also acquire access rights and any other interest in real property the Director considers necessary for transportation purposes (ARS 28-7092). The state may exercise eminent domain to acquire property or an interest in property necessary for transportation purposes (ARS 28-7093).

State Transportation Board, Authority and Policies

ARS 28-304 et. seq., outlines the responsibilities of the State Transportation Board (Board). Included is the authority to development and adopt a statewide transportation policy statement. At ARS 28-306, some key legislative criteria are mentioned: "..ensure that the future transportation system facilitates, rather than directs, future development in this state."; ".. the Board shall consider, to the greatest extant possible, local, regional and tribal transportation goals." At ARS 28-304 the Board can adopt a statewide transportation policy statement, adopt a long-range transportation plan, and adopt uniform transportation planning practices and performance based planning processes

The "Access Management Policy" (#12) was adopted by the Board in August 2003. This was a general internal policy, and not an administrative rule. Its purpose is to direct the Department to "preserve the functional integrity of the State Highway System through the development and implementation of a comprehensive access management program."

Controlled Access Highways

ARS 28-601, defines a controlled access highway as "a highway, street or roadway to or from which owners or occupants of abutting lands and other persons have no legal right of access except at such points only and in the manner determined by the public authority that has jurisdiction over the highway, street or roadway." ARS 28-732 states: "A person shall not drive a vehicle onto or from a controlled access roadway except at entrances and exits established by public authority."

Designation of Controlled and Limited Access Highways

Currently, controlled access (ARS 28-601.2) facilities in Arizona include all Interstate highways and the urban freeways in the Phoenix metropolitan area. Designation of a controlled access highway is under the authority of Director with the approval of the Board. Designations may be added or removed as they determine necessary. If a portion of highway frontage has access rights controlled by deed or court judgement, no access will be granted unless waived by the State Engineer. These highways are typically called freeways, but statutes do not require that controlled access segments be limited to freeways. Several existing non-controlled access highway segments have been identified by ADOT to be designated as access controlled highways. The Board's action to approve is based on two statutes. First, ARS 28-7046 - Opening, altering or vacating highway; defines the power of the Director or the Board to establish, open, relocate, alter, vacate, or abandon a State Highway or a portion of a State Highway. This statute defines that it is in the authority of the Board to approve such actions. The second is ARS 28-7092, land acquisition for transportation purposes. This statute defines the power of the Director to acquire real property that the director considers necessary for transportation purposes. Currently, highway segments are being designated controlled-access on an as-needed basis. There is no long-range plan in place identifying future controlled-access corridors on a statewide level.

Local Government Powers of Access Control
Legal tools available to local jurisdictions rather than ADOT.

Given the planning and land use powers of local governments, and the highway planning, improvement and operation authority of ADOT, the best access management can be achieved in cooperative partnerships between ADOT and local government.

The development of land necessitates the establishment of local streets and access to property. The powers of local government to control land planning and site development to manage access needs are more comprehensive and powerful than ADOT's. Access to roadway facilities can be regulated through the use of planning and regulatory measures including land division, subdivision regulation, and zoning regulations. The authority to implement these measures is given to cities through ARS 9-461 to 463.05 and counties through ARS 11-801 to 833. These regulations are briefly discussed below.

Subdivision Regulations
State legislation gives the cities and counties authority to regulate subdivisions. Subdivisions can be regulated with regard to the following access management techniques:

- Control the number of access points in relation to road deceleration and acceleration lanes to avoid conflict points;
- Ensure design of adequate driveway throat length to avoid a conflict with the flow of off-site traffic;
- Provide adequate driveway spacing requirements, corner clearance, and joint and cross access configurations;
- Orient lots, buildings, and access points to local streets and not to high-traffic-volume arterials; and
- Require reverse frontage to ensure that lots abutting the roadway obtain access from a local road.

A city or county site plan review process can require documentation of all access points and the internal circulation system. Intersection controls, medians and on-site circulation controls can be required to ensure that access and design standards for roadways are followed, and that lots are not configured in a manner that encourages inadequate spacing between access points. For example, flag lots, where lots are stacked on top of one another, but have separate access drives to the main highway, should be avoided. Also, subdivisions should avoid out-parcels, or out-lots, that are on the perimeter of a larger parcel and break its frontage along the roadway. This type of lot is sometimes created along a shopping center and sold to capitalize on highly valued locations (i.e., building pads with high visibility from an adjacent roadway or intersection).

The regulation of lot splits by jurisdictions could help to ensure increased spacing between access points. Arizona counties are restricted in regulating lot splits, however. For five or fewer lots, a county can only determine the compliance with minimum applicable county zoning requirements and **legal access.** The county may not deny approval of any land division that meets the requirements of this section or where the deficiencies are noted in the deed. A county may not require a public hearing on a request to divide five or fewer lots, parcels, or fractional interests, and if review of the request is not completed within 30 days from receipt of the request, the land division shall be deemed approved (ARS 11-809). The resulting land development along a highway, often referred to as "wildcat subdivisions," significantly increases the number of access points sought to a highway. Therefore, the use of subdivision regulation to manage access is greatly limited in unincorporated areas.

On state highways, what constitutes "legal" access is a determination by ADOT. Since ADOT has adopted access standards, engineering requirements and a regulatory permitting program, legal access to a state highway may only be determined by ADOT under the authority of the Director, not by county or city officials. Absent an ADOT determination of legal sufficiency, the property deed should note that the property does not have legal access established.

Zoning Regulations
Cities and counties are given the authority to develop planning and zoning regulations, ordinances, and plans by ARS Title 9 and ARS Title 11 respectively. Zoning regulations are provisions governing the use of land or buildings (or both), lot dimensions, the height and location of buildings, the size of yards, courts and open spaces, the establishment of setback lines, and other items. Controlling lot dimensions has an impact on driveway spacing, on-site circulation, and driveway lengths. Permit requests for new driveways, land use intensity changes and site improvements can be required to conform to access management guidelines. In addition, a city or county may prepare specific zoning plans for designated parcels of land and may establish an "Overlay Zone" as a special zoning district that overlays modified or enhanced regulations onto an existing zoning district. A corridor overlay can be used for access control problem areas in order to tailor zoning standards by priority or intensity of access, safety, and congestion problems. In addition, flexible zoning can provide for alternative site design, buffering, and screening between incompatible land uses.

To promote effective access management, local zoning ordinances should:
- Require larger minimum lot frontages;
- Adopt minimum spacing standards for driveways;
- Encourage joint and cross access;
- Require complete on-site circulation; and
- Promote activity centers rather than strip development.

General or comprehensive land use plans should:
- Identify access issues and problems;
- Establish goals, objectives and policies regarding access;
- Identify access management approaches; and
- Designate key transportation corridors for special treatment.

Planning and Regulatory Tools
This section provides a brief summary of the planning and regulatory methods available to control access to roadways.

General Plans and Land Use Plans
General plans that describe existing land uses and prescribe future ones are useful for planning the types and number of access points that may be allowed along a main roadway. The land use element specifies how the community envisions developing in the future and details the priorities and desires of the community's population. Development and adoption of the general plan sets the stage for the various types of development that will occur within a study area. Planning also will determine, sometimes by default, the location of future traffic signals necessary to serve the volume and density of the developed land. A well-planned city, town or county can avoid many development conflicts and create a more harmonious community. The general plan also includes a circulation element that can spell out general guidelines for access by roadway function.

Transportation Plans
A community's transportation plan is an adopted plan that describes the proposed future functional classification of roadways and provides guidelines for future growth of the transportation network. This plan is usually developed and used in conjunction with land use and general plans. Based on anticipated future development, the location and size of roadways will define a hierarchical roadway network required to meet expected traffic demands. Identification of proposed local roadways, in conjunction with a well-defined land use plan, can greatly aid in establishing appropriate access points to the state highway. In defining a roadway network, the location and need for traffic signals is also defined.

Subdivision and Zoning Regulations

Subdivision regulations provide guidance on the division and subdivision of land into lots, blocks, and public ways. Subdivision regulations complement the underlying zoning regulations. Many jurisdictions follow a site review process through which the planning and engineering staff can advise developers on the access standards and issues of a particular site. The site review process can require documentation of all access points. Traffic signals and intersection controls, medians, and on-site circulation can be controlled to ensure that adopted standards are followed. Zoning is the best tool to use to set access conditions since zoning can set specific conditions for zoning approval.

Zoning regulations provide information on the type of land use or development that can occur on each parcel. Zoning regulations work in conjunction with land use plans and subdivision regulations. Often subdivision regulations provide guidance on lot splits and further subdivisions. Certain types of lot configurations encourage inadequate spacing between access points, but the regulation of lot splits can help ensure wider spacing. In addition, regulations can orient lots and access points to local streets away from arterial roadways with high traffic volumes. Controlling lot dimensions has an impact on driveway spacing, on-site circulation and driveway lengths. Lot dimensions can be controlled through minimum lot size, minimum lot frontage and setback requirements.

Overlay zoning adds special requirements onto an existing zoning district. With overlay zoning, standards can be tailored by priority, or by intensity of access, safety, and congestion problems of a corridor. Overlay zoning has not yet been applied in Arizona to enforce access management; however, overlay zoning with access management guidelines has been implemented in other states, such as Pennsylvania, where overlay zoning regulates the location of access points and establishes minimum spacing between them. Flexible zoning is another means of achieving access control. Flexible zoning concepts are often incorporated in the planned unit development, in which allowable density may be aggregated across an entire development site and transferred from one part of the site to another. Flexible zoning involves the application of performance standards to achieve an overall result, without specifying how it will be achieved. It can allow for alternative site design, clustering of residential units or mixed-use developments, and buffering or screening between incompatible uses. Zoning, subdivision, and access control requirements need to be consistent.

Access Controls

Access control guidelines can specify the location and design requirements of all access points along a major roadway. The guidelines can control the number of access points in relation to road deceleration and acceleration lanes to avoid or minimize conflict points. Guidelines typically include specific design criteria for access points. These ensure adequate driveway throat length to avoid conflicts with flow of off-site traffic, adequate driveway spacing requirements, sufficient corner clearances, and joint and cross access configurations. As property owners apply for a new driveway permits, these guidelines can be enforced and applied. For existing driveways that may not currently meet the standards, conformance may be achieved when new permit requests are made, land use intensities change, or site improvements are initiated.

Justification to Regulate Access

In order to regulate, public agencies must show the need to protect the public health, welfare and safety. In studies in Arizona, by other states, research projects by the Federal Highway Administration, the National Cooperative Highway Research Program, and sponsored by the American Association of State Highway and Transportation Officials - all have concluded that access connections, as roadway design elements, create conflicts for motorists as vehicles enter, maneuver and exit the roadway. As access frequency increases, collisions also increase as well as travel delay. As access proliferates, the functional performance of the roadway declines. Arterial roads, originally designed to connect and serve communities become congested, leading to delays and safety problems, not only for motorized traffic but also for pedestrians and other non-motorized traffic. One of the important understandings of traffic congestion and increased collision rates has been the acknowledgment that the frequency of access points and the type of access is the single most important roadway element generating these problems. Traffic signals and access maneuvers contribute to travel delays, congestion and loss of capacity. Traffic controls and operations are made more complicated by the need to accommodate frequent access locations.

The safety benefits alone of access management are very important. For decades, traffic crashes has been the greatest source of serious injuries and the most likely reason for accidental death in the United States. Access management when applied to a corridor can achieve 40 to 60 percent reductions in crash frequency.

Reduced arterial functional performance also impacts the economic health of Arizona by limiting and delaying travel, increasing travel time and cost, and the costs of highway crashes. This impacts a wide range of economic interests such as freight mobility and efficiency, farm to market, service sectors, industry, employment base, and retail market areas.

When traffic volumes exceed the existing roadway capacity, nearby businesses begin to feel the effects of congestion. Potential customers are deterred by delays in leaving and re-entering the main road, or if they perceive a safety risk in making difficult turning movements. Market area is mostly based on customer travel time. The customer base shrinks as congestion increases. Besides decline in sales goals, property value and tax base may also be impacted. Roadways providing for regional travel needs begin fail their responsibility. New alternatives must be found. Ultimately the highway is transformed into a lower-speed road with a confusing mixture of signs and curb cuts that is no longer useful as a major transportation corridor.

As the motoring public experiences increasing travel delays, requests for solutions are made to transportation officials. Typical solutions include widening the highway or bypassing the old highway. These efforts to re-capture capacity and mobility are expensive to implement and disrupt the motoring public as well as adjacent land uses.

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